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EX PARTE OR LATE FILED

May 23, 2003

VIA HAND DELIVERY

RECEIVED

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

MAY 23 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notification of Ex Parte Communication
MB Docket No. 02-277;
MM Docket Nos. 01-235, 96-197, 01-317 and 00-244

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on May 22, 2003, M. Anne Swanson and I met with Jordan Goldstein, Senior Legal Advisor to Commissioner Michael J. Copps to discuss Paxson Communications Corporation's opposition to any modification or elimination of the UHF Discount as part of the FCC's omnibus biennial review of its broadcast ownership rules. During this meeting, the undersigned outlined the following four principal reasons for retaining the UHF Discount:

1. **The UHF Discount makes it possible to construct new over-the-air broadcast networks that serve niche markets that are underserved by the major networks.** Paxson and Univision have shown that this strategy can work, and have increased the diversity of both over-the-air and cable programming.
2. **The UHF Discount provides a reasonable approximation of the audience-reach handicap that UHF broadcasters face.** The Commission has repeatedly acknowledged the technical inferiority of over-the-air UHF stations. Although cable carriage may boost some stations' coverage above 50%, UHF stations still are unable to reach as many cable headends as their VHF counterparts, meaning that their overall service populations will be smaller. There is no evidence in the record supporting any number other than 50%, and there is no evidence to suggest that a more accurate number exists.

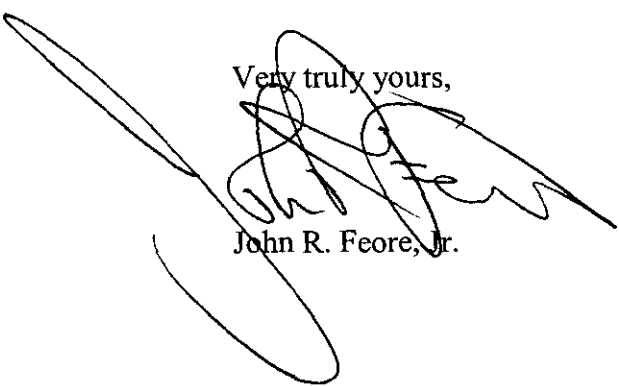
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3. **The UHF Discount helps to account for other financial handicaps faced by UHF broadcasters, creating a more level competitive playing field for competing UHF and VHF stations.** These additional financial handicaps include the greater expense of building and operating analog UHF stations and the lower ratings and consequent ad revenues garnered by UHF stations. By allowing owners that hold UHF stations to realize the economies of scale group ownership provides, the UHF Discount reduces these handicaps and allows UHF broadcasters to compete more effectively with their primarily VHF competitors.
4. **Parties were entitled to rely on the Commission's June 2000 decision affirming the UHF Discount until the end of the DTV transition.** The Commission has received no evidence undermining its June 2000 conclusion that would justify frustrating parties' rightful and understandable reliance on that decision.

In addition, the undersigned provided Mr. Goldstein with the attached filings of Paxson Communications Corporation urging the retention of the UHF Discount and copies of the attached filings of Capitol Broadcasting Company urging the elimination of the UHF Discount and asked that Commissioner Copps consider the overwhelming quality and quantity of the record evidence favoring retention of the UHF Discount as opposed to the unsubstantiated conclusory assertions urging elimination of the Discount. The undersigned also cited the FCC's Ninth Annual Report in MB Docket No. 02-145 to show that cable penetration has, in fact, declined since the Commission's June 2000 Biennial Decision.

As required by Section 1.1206(b) of the FCC's rules, two copies of this letter and attachments are being submitted for each of the above-referenced dockets.

Very truly yours,


John R. Feore, Jr.

JRF/mwh
Attachment

cc (w/o encl.): Jordan Goldstein, Esq.

EX PARTE OR LATE FILED

UHF DISCOUNT

RECORD SUBMISSIONS

OF

**PAXSON COMMUNICATIONS
CORPORATION**

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STAMP & RETURN

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May 16, 2003

RECEIVED

MAY 16 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation
Supplement to the Record Concerning Retention of the UHF Discount
Biennial Review of Broadcast Ownership Regulations
MB Docket No. 02-277

Dear Ms. Dortch:

Paxon Communications Corporation ("PCC"), by its attorneys, and pursuant to Section 1.1206 of the Commission's rules,¹ hereby submits this written *ex parte* presentation to aid the Commission in resolving questions that have arisen over the past several weeks with respect to retention of the UHF Discount. PCC has argued extensively through Comments, Reply Comments, and its May 7, 2003, written *ex parte* presentation that there is not a shred of evidence in the record of this proceeding that would support modification or elimination of the UHF Discount. PCC also made this fact clear to members of the House Energy and Commerce Committee through the attached letter submitted May 8, 2003.² Nonetheless, PCC has learned that questions have arisen on Capitol Hill regarding whether circumstances have changed sufficiently to warrant altering or eliminating the UHF Discount and whether empirical evidence supports retention of the current rule. PCC believes that the record provides unequivocal answers to both questions – ample evidence conclusively demonstrates that circumstances have not changed sufficiently to justify alteration or elimination of the UHF Discount. This letter should lay to rest any lingering doubts about retaining the UHF Discount so long as analog broadcasting continues and should serve as a departure point for the future debate about whether the rule will be appropriate in the DTV era.

The Realities of UHF Broadcasting Continue To Demand the UHF Discount

The competitive handicaps inherent in UHF broadcasting continue to justify the UHF Discount. Despite changes in the broadcast television marketplace since the adoption of the UHF Discount in 1985, the Commission properly recognized in June 2000 that competitive

¹ 47 C.F.R. § 1.1206.

² See Attachment 1.

conditions then continued to support the rule.³ The changes in UHF broadcasters' position cited by opponents of the UHF Discount, *i.e.* the advent of analog TV must-carry and the increase in viewers receiving television service by cable and satellite MVPDs, had largely taken shape by June 2000 and have changed little over the past three years. As the Commission found, these changes do not eliminate the need for the UHF Discount. That finding remains as true today as it was three years ago. In both the current and most recent Biennial Reviews, PCC, along with NAB, Granite Broadcasting, and Univision have submitted substantial evidence demonstrating that:

- UHF stations continue to be more expensive to construct and operate than VHF stations;⁴
- UHF signals continue to be technically inferior to VHF signals;⁵
- UHF signals continue to be unable to reach over-the-air audiences comparable to those of VHF stations;⁶
- UHF stations still do not gain cable carriage comparable to VHF stations;⁷
- UHF stations still do not receive ratings as high as those of VHF stations;⁸
- and consequently, UHF stations still are not as financially successful as their VHF competitors.⁹

³ See 1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Biennial Review Report*, 15 FCC Rcd 11058, 11078 ("1998 Biennial Review").

⁴ See Attachment 2 (originally submitted as Exhibit A to Comments of Paxson Communications Corporation, MM Docket No. 98-35, filed July 21, 1998.). See also, *e.g.*, Univision Comments at 4; Paxson Comments at 17-18; Paxson Reply Comments at 8; Supplement to the Record Concerning Retention of the UHF Discount, MB Docket No. 02-277, filed May 7, 2003, Attachment C at 5-8 ("UHF Ex Parte"). Accord, 1998 Biennial Review, 15 FCC Rcd 11078.

⁵ See Univision Reply Comments at 3; Granite Comments at 6; Paxson Comments at 15-16. See also 1998 Biennial Review, 15 FCC Rcd 11078-79.

⁶ See Paxson Comments at 17; Univision Reply Comments at 3-4.

⁷ See Granite Comments at 6; Univision Reply Comments at 8-9; Paxson Comments at 16-17. See also 1998 Biennial Review, 15 FCC Rcd 11078.

⁸ See UHF Ex Parte, Attachment A (originally included as Appendices C to Comments of the National Association of Broadcasters, MM Docket No. 98-35, filed July 21, 1998).

⁹ See UHF Ex Parte, Attachments A-B (originally included as Appendices C to Comments of the National Association of Broadcasters, MM Docket No. 98-35, filed July 21, 1998).

Neither cable carriage nor increased MVPD subscribership have or can effectively remedy these handicaps. Indeed, as PCC has shown, cable carriage only codifies UHF broadcasters' limited signal reach because carriage is guaranteed only on cable systems to which a good quality signal is delivered. The alternative – providing additional technical support to distant cable head-ends – only imposes additional costs on already financially burdened UHF stations. These real-world facts formed the basis for the Commission's decision in the 1998 *Biennial Review*,¹⁰ and, as Granite demonstrated in its Reply Comments, none of these facts have changed.¹¹ The Commission consequently has no evidentiary basis for altering its well-reasoned earlier decision.

Far from justifying abandonment of the UHF Discount, the growth in MVPD penetration and subscribership actually supports continuation of the Discount because that growth has placed the free-over-the-air American broadcasting system at risk. Many marginal UHF stations are only likely to survive by utilizing the economies of scale made possible by group ownership. Particularly during the resource-draining DTV transition, removing a support mechanism like the UHF Discount would be unwise, and could lead to a reduction in broadcast television service to vulnerable small and mid-sized communities. Although the overall range of media choices the average American consumer can access has increased over the past 20 years, broadcast television remains the cheapest, most reliable, and most easily accessible local information source. The diminution of service likely to result from alteration or elimination of the UHF Discount would therefore have a significant negative impact on localism and diversity in communities around the country. Accordingly, now more than ever, the UHF Discount is a necessary part of the Commission's broadcast ownership regulations.

Ample Empirical Evidence Supports the UHF Discount

Questions also have been raised regarding the extent to which the empirical evidence in the Commission's record in this Biennial Review demonstrates the continuing necessity of the UHF Discount. In an *ex parte* filing on May 7, 2003, PCC detailed for the Commission the extensive evidentiary record that supports continuation of the UHF Discount.¹² PCC cited evidence from both the current and 1998 Biennial Review proceedings including:

- evidence from Granite that UHF broadcasters' circumstances have not changed appreciably since the UHF Discount was upheld in June 2000;
- evidence from Univision and Paxson demonstrating that the UHF Discount enables broadcasters to economically reach underserved markets by developing new competitive networks serving, for example, minority communities and viewers interested in family-values and faith-based programming;

¹⁰ See 1998 *Biennial*, 15 FCC Rcd 11078-79.

¹¹ See Granite Reply Comments at 5-6.

¹² See Supplement to the Record Concerning Retention of the Uhf Discount, MB Docket No. 02-277, filed May 7, 2003.

- evidence from Univision and Paxson that UHF broadcasters are experiencing new interference from DTV stations, further handicapping their ability to serve their communities; and
- evidence from NAB demonstrating the technical and financial handicaps inherent in UHF broadcasting.

Paxson also submits with this letter a chart illustrating facts the Commission already has found -- that the greater expense of building and operating analog UHF stations is a substantial handicap for broadcasters.¹³ These pieces of evidence, among others, conclusively show that the UHF Discount remains necessary in the analog world.

In addition, PCC has submitted evidence to the House Energy and Commerce Committee that demonstrates that the current competitive disparities between analog UHF and VHF stations are likely to persist even after the DTV transition is complete. Power level comparisons between PCC's UHF stations and their VHF competitors show that -- consistent with the Commission's policy of allowing current stations to replicate their service areas -- the VHF stations have, in many cases, been granted considerably higher power than the Paxson UHF stations.¹⁴

In many markets, these power disparities lead to population coverage disparities that translate directly into lower revenues. Attachment 3 to this letter shows the DTV population disparity of several PCC DTV stations as compared to their current analog VHF competitors' DTV stations. These population figures represent PCC's maximized facilities, so Attachment 3 already reflects the full extent to which the Commission's DTV maximization policies will allow these stations to equalize their DTV competitive position with respect to these competitors. In some cases, the difference in population coverage is particularly stark. For example, WGPX-DT, PCC's station in the Greensboro-High Point-Winston Salem DMA, reaches less than 36% of the viewers reached by WFMY-DT, one of PCC's VHF competitors in that market. The Commission must keep in mind that the future population coverage disparities described by Attachment 3 will be in addition to the other legacy handicaps that former analog UHF broadcasters will carry forward into the DTV era, such as a history of lower viewer ratings, non-network affiliation, and financial underperformance. Thus, to declare at this point that maximization has made UHF stations the equal of their current analog VHF competitors would be contrary to what the Commission already knows. Given the many uncertainties regarding stations' actual future DTV operations, the evidence before the Commission clearly compels delay in deciding whether to retain the UHF Discount after the DTV transition is complete.

Thus, considerable evidence shows not only the ongoing need for the UHF Discount in the current analog world, but also the potential that the need will carry over to the digital world as well. This only serves to confirm the wisdom of the Commission's stated intention to

¹³ See Attachment 2.

¹⁴ See Attachment 1.

reconsider the UHF Discount only once the transition is far enough along to provide an accurate picture of the public interest in the DTV world.¹⁵

Loosening the National Ownership Cap Does not Justify Altering the UHF Discount

PCC also understands that concerns have arisen as to whether maintaining the UHF Discount is logically consistent with loosening the national ownership cap. Given the different aims and effects of these two rules, such a course would not only be intellectually consistent but a sound policy approach. The national ownership cap is meant to foster a diversity of voices in every local market by limiting the number of markets any one broadcaster can reach. The UHF Discount, on the other hand, is designed to ensure that no broadcaster is credited with reaching a substantial number of viewers that it does not, in fact, reach. In that respect, the UHF Discount acts as a corrective measure, rationalizing the limitations placed on broadcasters by the national ownership cap, and is fundamentally deregulatory in nature. The 1996 Telecommunications Act instituted the Biennial Ownership Review process to determine whether the national ownership cap remains "necessary in the public interest." This inquiry has no bearing, however, on whether a corrective rule like the UHF Discount remains necessary to ensure that broadcasters that own UHF stations are not unfairly handicapped in reaching as many viewers as they are permitted by law. As PCC has shown, due to the continuing technical and financial handicaps borne by UHF broadcasters, the 50% discount remains a reasonable approximation of the number of viewers actually reached by UHF broadcasters regardless of the programming or ownership diversity of the other voices in each media market.

Indeed, by ensuring the economic viability of UHF broadcasting, the UHF Discount ensures added diversity in local markets. As described in the record before the FCC, Univision has been able to take advantage of the economies of scale offered by the UHF Discount to offer Spanish-language programming across the country. PCC utilized the same strategy to create PAXTV, the nation's seventh broadcast network, which offers family-values and faith-based programming to an often overlooked and underserved market. Given its stunning record of encouraging new and diverse programming in local television programming markets, and the hard facts regarding UHF broadcasting's continuing technical and financial handicaps, it is hard to understand why the UHF Discount has come under such searching review at this time. Accordingly, the Commission should reject the facile argument that loosening of the national ownership cap somehow justifies an elimination of the UHF Discount.

Conclusion

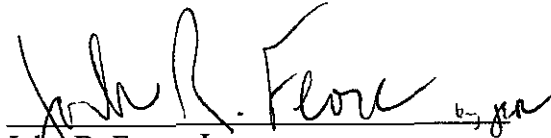
There can be no doubt about what the evidence in this proceeding demands: **all the evidence before the Commission** supports retention of the UHF Discount for as long as analog broadcasting remains the chief television broadcasting format. Moreover, retaining the UHF Discount would serve every Commission policy that the Discount implicates. The time for debating the retention of the rule in the DTV era is not yet ripe, but already substantial evidence exists to indicate that the rule will remain necessary even after the DTV transition. In any case,

¹⁵ See 1998 Biennial Review, 15 FCC Rcd 11079.

Marlene H. Dorch, Esq.
May 16, 2003
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no relevant circumstances facing UHF broadcasters have changed since the Commission last upheld the UHF Discount just three years ago. Accordingly, retention of the rule remains necessary in the public interest, and the Commission should reject all invitations to convert this Biennial Review into a vehicle for re-regulating UHF broadcasters without justification.

Respectfully Submitted,



John R. Feore, Jr.
Counsel for Paxson Communications Corporation

Attachments

cc w/ attachments:

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
W. Kenneth Ferree, Chief, Media Bureau
Paul Gallant, Special Advisor, Media Ownership Working Group

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bcc: w/ attachments:

Lowell W. Paxson
William L. Watson

Marlene H. Dorch, Esq.
May 16, 2003
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bbcc w/attachments:

Jason E. Rademacher
Susan E. Anderson

ATTACHMENT 1



May 8, 2003

The Honorable John D. Dingell
United States House of Representatives
Washington, DC 20515

Re: Retention of the UHF Discount

Dear Congressman Dingell:

I am writing on a matter of critical importance to Paxson Communications Corporation ("PCC") and other UHF television broadcasters throughout the country. I understand that you may push in Congress and at the FCC for repeal of the UHF Discount. With respect, it is my firm belief that the UHF Discount remains absolutely essential to enable UHF broadcasters in a given market to compete on a relatively even footing with their VHF counterparts. Again, with respect, I submit that all of the factual evidence--as opposed to just three conclusory pleadings and a single *ex parte* filing--presented to the FCC on this matter in the current *Biennial Review of Broadcast Ownership Regulations* (MB Docket No. 02-277) illustrate the continuing need for the UHF Discount. As you consider this issue, I would ask that you bear the following facts in mind.

The UHF Discount Is Essential For Existing Analog Stations

Less than three years ago, in its *1998 Biennial Review*, the FCC concluded that the UHF Discount remained "necessary in the public interest" to equalize the competitive positions of UHF and VHF broadcasters. This conclusion was premised on two key findings: first, that inherent and insurmountable technical limitations prevent UHF stations from reaching as great a number of over-the-air viewers and cable headends with a quality signal as VHF stations; and, second, that higher operating expenses for UHF stations place them at a competitive disadvantage. Nothing has occurred in the three years since that conclusion to diminish the need for the UHF Discount. In fact, proponents of the UHF Discount, including PCC, Univision, Granite Broadcasting ("Granite"), and the National Association of Broadcasters ("NAB"), have presented ample evidence to the FCC demonstrating the need to retain the UHF Discount.

Univision, for example, provided significant evidence that the UHF Discount helps it to reach minority households in many of its markets, which tend to have low cable subscribership. PCC and Univision also provided evidence that the activation of new DTV stations is creating additional interference to analog UHF stations with the accompanying loss of service. This plainly refutes any suggestion that the DTV transition itself is ameliorating the competitive disparity between VHF and UHF stations or that eliminating the UHF Discount prior to the close

of the DTV transition would be prudent policy. Factual evidence presented to the FCC by the NAB and PCC in the last two *Biennial Review* proceedings continue to conclusively demonstrate:

- that UHF signals are technically inferior to VHF signals;
- that UHF signals are unable to reach over-the-air audiences comparable to those of VHF stations;
- that UHF stations do not gain cable carriage comparable to VHF stations;
- that UHF stations do not receive ratings as high as those of VHF stations;
- and that consequently, UHF stations are not as financially successful as their VHF competitors;

The fact is that in the analog world, UHF stations simply do not have the ability to reach anything approaching every household in their DMAs, even when cable carriage is considered. For example, in some cases PCC stations cover as little as 27% of the area covered by VHF stations in the same market. Because cable carriage is based on a station's ability to deliver a quality signal to a sometimes distant headend, it is not surprising that UHF stations would be unable to garner the same level of cable carriage as their VHF counterparts. These types of disparities continue to exist and, with the additional DTV-generated interference noted by Univision and PCC, will only be made worse as additional DTV stations commence full power operations.

Therefore, counting each UHF station as reaching only 50% of the households in its DMA allows station-group operators like PCC and Univision to use the UHF Discount to acquire and operate stations that otherwise might fail, enabling them to serve niche audiences that are frankly underserved by the Big Four networks. Rather than seeking ways to curtail UHF broadcasting by eliminating the Discount, I urge you to seek ways to encourage this type of service to the public.

The UHF Discount Will Continue To Be Needed In The Digital World

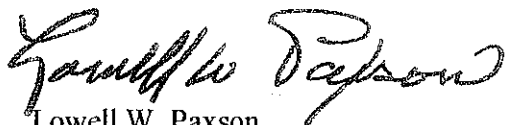
While completion of the DTV transition might make it appropriate to then review the UHF Discount, it is clear that the DTV transition has not progressed sufficiently to make that critical decision at this time because there simply is no record on which to be certain that the UHF Discount will not be needed in the post-transition world. As described above, what is certain is that the transition itself is harming analog UHF broadcasters' ability to serve their viewers, and that such harm is only likely to increase as the transition progresses. Accordingly, eliminating the UHF Discount now based on the possibility of future obsolescence would be a grave error based on unsubstantiated speculation.

The Honorable John D. Dingell
May 8, 2003
Page 3

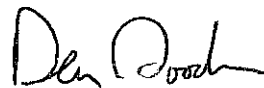
Although the FCC properly has noted that UHF broadcasters' ability to maximize their service area could be an equalizer between UHF and VHF stations, its decision to base the initial DTV Table of Allotments on a principle of replication of service has locked in the signal-coverage disparities of the analog world. For example, in the Detroit market, PCC station WPXD-DT has a pending construction permit application requesting 110 kW ERP, while Fox affiliate WJBK-DT is authorized at 1000 kW. Likewise, in the Washington, D.C. area, PCC station WPXW-DT is licensed at a power of 90 kW, while Fox affiliate WTTG-DT is authorized at 1000 kW. As a consequence, PCC reaches 30% fewer Washington area viewers – or nearly 1,000,000 fewer people – than WTTG-DT. I have attached a chart summarizing these and other disparities faced by PCC UHF stations. With these types of disparities in the digital world, a continued discount will be required if the Congress and the FCC wish to maintain the integrity of the over-the-air broadcast system.

Finally, I firmly believe that eliminating the UHF Discount would be flatly inconsistent with all known facts about UHF broadcasting. It is beyond question that UHF stations already are currently disadvantaged as compared to their VHF counterparts, and the digital system being implemented perpetuates this disadvantage. I simply do not see how it could possibly be necessary in the public interest to eliminate a rule that injures no one and contributes so much to the level of competition in the American broadcasting system.

Sincerely yours,



Lowell W. Paxson
Chairman & CEO
Paxson Communications Corporation



Dean M. Goodman
President & COO
Paxson Communications Corporation

Attachment

**SELECTED AUTHORIZED DTV POWER LEVELS IN PAXSON
MARKETS**

MARKET (DMA RANK)	PAXSON STATION	DTV ERP (as authorized in CP) (kW)	COMPETING ANALOG VHF STATION	DTV ERP (most recently authorized facilities) (kW)	PAXSON POWER AS A PERCENTAGE OF COMPETITORS (%)
Houston, TX (11)	KPXB-DT	9.5	KPRC-DT (NBC)	1000	1.0
			KTRK-DT (ABC)	797	1.2
			KHOU-DT (CBS)	759	1.3
Portland, OR (23)	KPXG-DT	16 (pending application)	KGW-DT (NBC)	1000	1.6
			KOIN-DT (CBS)	839	1.9
			KPTV-DT (IND)	741	2.2
Hartford-New Haven, CT (27)	WHPX-DT	90	WFSB-DT (CBS)	1000	9.0
Washington, DC (8)	WPXW-DT	90	WTTG-DT (FOX)	1000	9.0
			WJLA-DT (ABC)	1000	9.0
			WRC-DT (NBC)	813	11.1
			WUSA-DT (CBS)	646	13.9
Greensboro-High Point - Winston Salem, NC (46)	WGPX-DT	95	WFMY-DT (CBS)	1000	9.5
			WGHP-DT (FOX)	1000	9.5
			WXII-DT (NBC)	815	11.7
Detroit, MI (10)	WPXD-DT	110 (pending application)	WJBK-DT (FOX)	1000	11.0
			WDIV-DT (NBC)	773	14.2
			WXYZ-DT (ABC)	770	14.3

SELECTED AUTHORIZED DTV POWER LEVELS IN PAXSON MARKETS

MARKET (DMA RANK)	PAXSON STATION	DTV ERP (as authorized in CP) (kW)	COMPETING ANALOG VHF STATION	DTV ERP (most recently authorized facilities) (kW)	PAXSON POWER AS A PERCENTAGE OF COMPETITORS (%)
Indianapolis, IN (25)	WIPX-DT	165	WTHR-DT (NBC)	1000	16.5
			WTTV-DT (IND)	1000	16.5
			WRTV-DT (ABC)	898	18.4
Seattle-Tacoma, WA (12)	KWPX-DT	175	KING-DT (NBC)	960	18.2
			KSTW-DT (IND)	850	20.6
			KOMO-DT (ABC)	810	21.6
			KVOS-DT (IND)	612.2	28.6
			KIRO-DT (CBS)	603	29.0
			KCPQ-DT (FOX)	600	29.2
Oklahoma City, OK (45)	KOPX-DT	200	KFOR-DT (CBS)	790	25.3
Miami-Ft. Lauderdale, FL (17)	WPXM-DT	200	WFOR-DT (CBS)	1000	20.0
Phoenix, AZ (16)	KPPX-DT	200	KTVK-DT (IND)	1000	20.0
Providence, RI - New Bedford, MA (49)	WPXQ-DT	200 (pending application)	WJAR-DT (NBC)	974	21.5
Grand Rapids, MI (38)	WZPX-DT	212	WZZM-DT (ABC)	1000	21.2
Birmingham, AL (40)	WPXH-DT	225	WBRC-DT (FOX)	1000	22.5
Honolulu, HI (72)	KPXO-DT	297	KHON-DT (FOX)	1000	29.7
			KITV-DT (ABC)	1000	29.7

**SELECTED AUTHORIZED DTV POWER LEVELS IN PAXSON
MARKETS**

MARKET (DMA RANK)	PAXSON STATION	DTV ERP (as authorized in CP) (kW)	COMPETING ANALOG VHF STATION	DTV ERP (most recently authorized facilities) (kW)	PAXSON POWER AS A PERCENTAGE OF COMPETITORS (%)
Tampa-St. Petersburg, FL (13)	WXPX-DT	210	WTSP-DT (CBS)	625	33.6
Philadelphia, PA (4)	WPPX-DT	200	WCAU-DT (NBC)	560	35.7
Chicago, IL (3)	WCPX-DT	200	WGN-DT (IND)	475	42.1
Cedar Rapids- Waterloo & Dubuque, IA (89)	KPXR-DT	500	KCRG-DT (ABC)	1000	50.0

ATTACHMENT 2

UHF/VHF – COMPARATIVE EQUIPMENT AND ELECTRICITY COSTS*

Low VHF (Ch. 2 - 6)	100 KW	40 KW	35%	114 KW	\$ 69,905	\$ 400,000	\$250,000
High VHF (Ch. 7 - 13)	316 KW	60 KW	35%	171 KW	\$104,857	\$ 700,000	\$400,000
UHF	5,000 KW	240 KW	55%	437 KW	\$267,968	\$1,250,000	\$750,000

^{1/} Information provided by Comark.

ATTACHMENT 3

**SELECTED AUTHORIZED DTV POWER LEVELS IN PAXSON
MARKETS**

MARKET (DMA RANK)	PAXSON STATION	COMPETING ANALOG VHF STATION	COMPETING POPULATION	PAXSON POPULATION	PAXSON POPULATION AS A PERCENTAGE OF COMPETITORS (%)
Greensboro- High Point- Winston Salem, NC (46)	WGPX-DT	WFMY-DT (CBS)	4,744,000	1,693,000	35.7
Providence, RI - New Bedford, MA (49)	WPXQ-DT	WJAR-DT (NBC)	6,218,000	3,227,000	51.9
Hartford-New Haven, CT (27)	WHPX-DT	WTNH-DT (ABC)	5,875,000	3,204,000	54.5
Raleigh-Durham (Fayetteville), NC (29)	WRPX-DT	WRAL-DT (CBS)	3,468,000	2,079,000	59.9
Albany, NY (57)	WYPX-DT	WRGB-DT (CBS)	1,304,000	928,000	71.2
Washington, DC (8)	WPXW- DT	WUSA-DT (CBS)	7,437,000	5,319,000	71.5
Cedar Rapids- Waterloo & Dubuque, IA (89)	KPXR-DT	KCRG-DT (ABC)	1,108,000	803,000	72.5
Knoxville, TN (62)	WPXK-DT	WBIR-DT (NBC)	1,171,000	916,000	78.2

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May 7, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Supplement to the Record Concerning Retention of the UHF Discount
Biennial Review of Broadcast Ownership Regulations
MB Docket No. 02-277

Dear Ms. Dortch:

Paxson Communications Corporation ("PCC"), by its attorneys, and pursuant to Section 1.1206 of the Commission's rules, hereby submits this written *ex parte* presentation to aid the Commission in its review of the UHF Discount as part of its omnibus 2002 *Biennial Review* of its broadcast ownership rules.¹ PCC wishes to take this opportunity to emphasize that there is not a shred of evidence in the record that would support modification or repeal of the UHF Discount. Indeed, all the evidence currently before the Commission illustrates the continuing need for the UHF Discount. The Commission affirmed the UHF Discount in June, 2000, pursuant to a comprehensive record, and any action to repeal or modify the rule without clear, compelling, and substantial evidence would be arbitrary and capricious. Moreover, the wholesale re-regulation of UHF broadcasters would be inconsistent with the Commission's responsibility under Section 202(h) to eliminate burdensome regulations that disserve competition and the public interest. Accordingly, the Commission must reaffirm that the UHF Discount remains necessary for the remainder of the DTV transition and possibly beyond.

No Evidence in This Proceeding Supports Modification or Repeal of the UHF Discount.

Less than three years ago, in its 1998 *Biennial Review*, the Commission found that the UHF Discount remains "necessary in the public interest" to equalize the competitive positions of

¹ See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 02-277; Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, 17 FCC Rcd 18503 (2002) (the "2002 Biennial Review").

UHF and VHF broadcasters.² The Commission based this conclusion on two important findings: first, that insurmountable technical limitations prevent UHF stations from reaching as great a number of over-the-air viewers and cable headends with a quality signal; and, second, that higher operating expenses for UHF stations place them at a competitive disadvantage.³

The three commenters in this proceeding that have questioned the continuing validity of the UHF Discount have presented no evidence that undermines either the Commission's findings or its conclusion. Instead, they offer only conclusory statements that the UHF Discount should be eliminated. A consortium of children's groups, for example, states that the Commission "should eliminate the UHF Discount, which overcompensates UHF station owners,"⁴ but provides no evidence or explanation to support its contention. Similarly, Westwind Communications, LCC states in its Reply Comments that the Commission should eliminate the "anachronistic" UHF Discount without disclosing how a rule reaffirmed by the Commission less than three years ago became outdated so quickly.⁵ The only party to offer more than a sentence against retention of the UHF Discount – the United Church of Christ – offers only past Commission pronouncements regarding the slight amelioration of the UHF handicap.⁶ As PCC explained in its Reply Comments, these statements were before the Commission when it most recently retained the UHF and cannot form the basis for repealing it now.

These three comments together with a recent ex parte filing provide the entire record in favor of repealing or modifying the UHF Discount that has been developed in this proceeding and cannot support any Commission action, let alone the repeal of a rule that was so recently reaffirmed. Indeed, without substantial evidence of significantly changed circumstances over the past three years, it would be difficult to produce the reasoned explanation that a reviewing court would require for modification of the UHF Discount at this time.⁷ Given its record defending its ownership decisions in court, the Commission must be wary of making sweeping changes without sufficient record evidence to support its decisions. That is particularly the case where, as here, important public benefits continue to flow from the UHF Discount.

²1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Biennial Review Report*, 15 FCC Rcd 11058, 11078 ("1998 Biennial Review").

³ See *id.*

⁴ Comments of Children Now, *et al* at 3.

⁵ Reply Comments of Westwind Communications, LLC at 3

⁶ See Comments of the Office of Communications, Inc. of the United Church of Christ, *et al* at 56-58.

⁷ *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983) (reasoned opinion beyond that necessary to refrain from adopting a rule is required to discard a rule); *Office of Communication of United Church of Christ v. FCC*, 560 F.2d 529, 532 (2d Cir. 1977); *National Wildlife Foundation v. Mosbacher*, 1989 U.S. Dist. Lexis 9748 (D.D.C. 1989) (overturning agency order amending two-year old rule without reasoned explanation).

The Commission Has Received Substantial Evidence that the UHF Discount Remains Necessary in the Public Interest.

At the same time, proponents of the UHF Discount, including PCC, Univision, Granite Broadcasting ("Granite"), and the National Association of Broadcasters ("NAB"), have presented ample evidence in favor of retaining the UHF Discount. In a recent *ex parte* filing, Capitol Broadcasting Company, Inc. ("Capitol") complains that there has been insufficient discussion of the UHF Discount.⁸ To the contrary, there has been considerable discussion of the UHF Discount – but nearly all of it indicates that the UHF Discount must be retained.

Univision, for example, provided significant evidence that the UHF Discount helps enable it to reach minority households in many of its markets, which tend to have low cable subscribership.⁹ Univision also provided evidence that the activation of new DTV stations is creating additional interference to analog UHF stations with the accompanying loss of service.¹⁰ As the Commission is aware, PCC's UHF station KSPX(TV), Sacramento, California, also has experienced unpredicted interference from a DTV station. This unexpected interference experienced by KSPX and other stations plainly refutes any suggestion that the DTV transition itself is ameliorating the competitive disparity between VHF and UHF stations or that eliminating the UHF Discount prior to the close of the DTV transition would be prudent policy.

This new evidence must be considered in addition to the comprehensive evidence presented by PCC and NAB in the 1998 *Biennial Review* proceeding. PCC has attached to this letter two studies presented by NAB as well as portions of PCC's Comments and Reply Comments in the 1998 *Biennial Review* to ensure that the Commission still has this information in mind as it considers the UHF Discount.¹¹ Taken together these materials continue to conclusively demonstrate:

- that UHF signals are technically inferior of VHF signals;
- that UHF signals are unable to reach over-the-air audiences comparable to those of VHF stations;
- that UHF stations do not gain cable carriage comparable to VHF stations;
- that UHF stations do not receive ratings as high as those of VHF stations;
- and that consequently, UHF stations are not as financially successful as their VHF competitors;

⁸ See Written *Ex Parte* Notice of Capitol Broadcasting Company, Inc. at 1 ("*Capitol Ex Parte*").

⁹ See Univision Reply Comments at 6-7.

¹⁰ See *id.* at 10-11.

¹¹ See Attachments A-D.